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March 11, 2020

Via Electronic Filing

The Honorable Magistrate Judge Gabriel W. Gorenstein
U.S. District Court Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *De La Rosa v. Aspenly Co. LLC et al*
Case No.: 1:18-cv-03456

Dear Honorable Magistrate Judge Gorenstein:

This law firm represents Defendant Pure Green NYC 8th Street Corp (the “**Defendant**”) in the above-referenced matter.

Pursuant to Your Honor’s Individual Motion Practice Rules 1(B), and Your Honor’s March 11, 2020 Order [Dckt. No. 87] this letter respectfully serves to as a response to Plaintiff’s March 10, 2020 letter [Dckt. No. 84].

On October 4, 2018 the Court issued a Civil Case Management Plan and Scheduling Order. [Dckt. No. 36]. Per paragraph 9 of that Order, all expert discovery including disclosures was to be completed by March 27, 2019. Thereafter, the Court granted an application to extend discovery with expert discovery to close 45 days after April 8, 2019. [Dckt. No. 41]. The second application to extend the discovery deadlines was also granted with the deadline for expert discovery being extended to May 23, 2019. [Dckt. No. 43]. The third application to extend the discovery deadlines was granted in part with the Court only approving the extension of fact discovery until June 23, 2019. See ECF Document # 50

By way of background, Defendant initially engaged the services of Robert Anic of RPO, Inc. to provide expert witness services.

On January 30, 2018, the parties jointly conducted an expert site visit at the subject premises. Plaintiff’s counsel attended with his expert – Jimmy Zuehl, and Defendant’s counsel attended with his former expert – Robert Anic. The parties’ respective experts inspected the subject premises, took measurements, and photographs. Before leaving, counsel exchanged their experts’ contact information, and agreed to exchange their experts’ written reports.

On February 27, 2019, Plaintiff’s counsel emailed Defendant with its Rule 26 expert disclosures. On March 4, 2019, Plaintiff’s counsel emailed Defendant with an amended Rule 26 expert disclosure.

On or around April 4, 2019, Mr. Anic visited the subject premises again to, *inter alia*, investigate the allegations of the Complaint, and peer review the report and recommendation of

Plaintiff's expert (Jimmy Zuehl). Mr. Anic presented his findings in the form of a written report, which Defendant produced to Plaintiff on or around May 9, 2019.

On Friday, March 6, 2020, the undersigned received an email from Defendant's expert witness, Mr. Anic, stating that he would be unable to testify at the upcoming trial – currently scheduled to begin on May 11, 2020 – because he is no longer employed at RPO Inc., and has relocated to the Hudson Valley.

In light of the foregoing, and for the reasons more fully explained in Dckt. No. 83, Defendant respectfully requests that fact discovery be reopened to, through and including, April 30, 2020, for the limited purpose of permitting Defendant to engage a new expert witness to prepare a report in order to testify at the upcoming trial.

Thank you, in advance, for your time and attention to this matter.

Respectfully submitted,

LEVIN-EPSTEIN & ASSOCIATES, P.C.

By: /s/ Jason Mizrahi

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VIA ECF: All Counsel